

ORDINANCE NO. 2002-_____

AN ORDINANCE AMENDING CHAPTER 86, UTILITIES, OF THE CITY CODE BY REPEALING DIVISIONS 4 AND 5 OF ARTICLE 3; AMENDING IMPACT FEES FOR WATER AND WASTEWATER FACILITIES; ADOPTING UPDATED LAND USE ASSUMPTIONS AND AN UPDATED IMPACT FEE CAPITAL IMPROVEMENTS PLAN; AMENDING IMPACT FEE SERVICE AREAS FOR THESE FACILITIES; PROVIDING FOR COLLECTION AND ASSESSMENT OF IMPACT FEES; PROVIDING FOR OFFSETS AND CREDITS AGAINST IMPACT FEES; PROVIDING FOR ACCOUNTS FOR IMPACT FEES AND USE OF FUNDS IN THESE ACCOUNTS; PROVIDING FOR APPEALS, RELIEF PROCEDURES AND EXEMPTIONS; PROVIDING FOR FUTURE UPDATES; PROVIDING FOR AGREEMENTS FOR CAPITAL IMPROVEMENTS; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING FOR PENALTIES.

RECITALS:

1. In 1987 the Texas Legislature adopted Senate Bill 336, subsequently amended and adopted as Chapter 395 of the Local Government Code, authorizing impact fees for water, wastewater, and other facilities; and
2. The City previously has adopted land use assumptions, capital improvements plan and impact fees for water and wastewater facilities; and
3. In 2001 the Texas Legislature adopted Senate Bill 243, amending Chapter 395 of the Local Government Code, requiring impact fees to be calculated in a different manner, and requiring an annual certification of compliance with state law by the City to the Attorney General; and
4. The City Council desires to update and amend its impact fee program for water and wastewater facilities in accordance with Senate Bill 243; and
5. The City Council on August 12, 2002 designated the Planning and Zoning Commission, with one additional ad hoc member, as the City's Capital Improvements Advisory Committee on Impact Fees to advise the City Council concerning amendment of the land use assumptions, impact fee capital improvements plan and the amounts of impact fees for water and wastewater facilities; and
6. The Capital Improvements Advisory Committee on Impact Fees met on September 10, 2002, to review updates to the land use assumptions, impact fee capital improvements plan and impact fees for water and wastewater facilities, and the Committee approved written comments to the City Council in accordance with Chapter 395, as amended; and
7. The City Council held a public hearing on September 23, 2002, on updates to the land use

assumptions, impact fee capital improvements plan and impact fees for water and wastewater facilities; and

8. The City Council finds that the City has fully complied with Chapter 395 of the Texas Local Government Code, as amended, in the notice, adoption, promulgation and methodology necessary to update and amend the City's impact fees for water and wastewater facilities; and

9. This ordinance is intended to and satisfies the statutory requirements for amending land use assumptions, capital improvements plan and impact fees; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 86, Utilities, of the San Marcos City Code is amended by repealing Division 4, Sewer System Impact Fee, and Division 5, Water System Impact Fee, of Article 3, and replacing them with the following provisions, to read:

SAN MARCOS IMPACT FEE ORDINANCE

Division I. General Provisions

Section 1. Short Title.

This ordinance, or its subsequent codification, shall be known and cited as the San Marcos Impact Fee Ordinance.

Section 2. Purpose.

This ordinance is intended to assure the provision of adequate public facilities to serve new development in the city by requiring each new development to contribute payments towards its share of the costs of the facilities necessitated by and attributable to the new development.

Section 3. Authority.

This ordinance is adopted pursuant to Texas Local Government Code Chapter 395 and the City Charter. The provisions of this ordinance shall not be construed to limit the power of the city to utilize other methods authorized under State law or pursuant to other city powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this ordinance. Guidelines may be developed and approved by ordinance, resolution, or otherwise to implement and administer this ordinance.

Section 4. Definitions

A. *Advisory committee* means the capital improvements advisory committee on impact fees designated by the city council in accordance with Local Government Code Chapter 395.

B. *Assessment* means the determination of the amount of the maximum impact fee per service unit which can be imposed on new development under this ordinance.

C. *Capital improvement* means either a water facility or a wastewater facility, with a life expectancy of three or more years, to be owned and operated by or on behalf of the city.

D. *Capital improvements plan* means the adopted plan, as amended from time to time, that identifies water and wastewater capital improvements or facility expansions and their associated costs which are necessitated by and attributable to new development and will be financed in whole or in part through water or wastewater impact fees imposed under this ordinance. The *capital improvements plan* includes the wastewater improvements plan and the water improvements plan.

E. *City* means the City of San Marcos, Texas.

F. *Credit* means the amount of the reduction of an impact fee for fees, payments or charges for the same type of capital improvements for which the fee has been assessed.

G. *Facility expansion* means an expansion of the capacity of any existing water or wastewater facility, as applicable, for the purpose of serving new development, but does not include the repair, maintenance, modernization, or expansion of an existing water or wastewater facility to the extent that it serves existing development.

H. *Impact fee* means a fee either for water facilities or for wastewater facilities imposed on new development in order to generate revenue to fund or recoup all or part of the costs of capital improvements or facility expansions necessitated by and attributable to the new development. *Impact fees* do not include 1) the dedication of rights-of-way or easements for water facilities or wastewater facilities, 2) a requirement for the construction of such facilities imposed under the city's zoning or subdivision regulations, 3) fees placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or wastewater mains, 4) pro rata fees for reimbursement of the city's costs for extending water or wastewater mains, or 5) charges for water or wastewater services to a wholesale customer such as a water district, political subdivision of the state, or other wholesale utility customer.

I. *Land use assumptions* means the projections of population and employment growth and associated changes in land uses, densities and intensities adopted by the city, as amended from time to time, upon which the capital improvements plan is based.

J. *Land use equivalency table* means the table included by reference in this ordinance as Exhibit 1, as amended from time to time, that converts the demands for capital improvements generated by various land uses to numbers of service units.

K. *New development* means an activity involving the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure, or any use or extension of land, which 1) has the effect of increasing the requirements for capital improvements or facility expansions, measured by the number of service units to be

generated by the activity, 2) requires the approval of a plat, the issuance of a building permit, or connection to the city's water or wastewater system, and 3) is not exempted from impact fees by the provisions of this ordinance. *New development* includes the conversion of an existing use from on-site water or wastewater facilities to the use of city water or wastewater facilities.

L. *Offset* means a reduction of an impact fee designed to fairly reflect the value of system facilities provided by a developer under the city's subdivision regulations or other requirements, in accordance with this ordinance or council-approved administrative guidelines.

M. *Plat* has the meaning given the term in Chapter 110 of the City Code. *Plat* includes replat.

N. *Plat recordation* means the date the final plat of a subdivision is filed in the appropriate county records.

O. *Plumbing permit* means any plumbing permit issued by the city building inspection division.

P. *Property owner* means any person, corporation, legal entity or agent thereof having a legal or equitable interest in the land for which an impact fee becomes due. *Property owner* includes the developer for a new development.

Q. *Recoupment* means the imposition of an impact fee to reimburse the city for capital improvements which the city has previously oversized to serve new development.

R. *Service area* means either an impact fee water service area or an impact fee wastewater service area within the city or the city's extraterritorial jurisdiction, within which impact fees may be collected for new development, and within which the impact fees will be expended for the types of facility improvements or expansions identified in the capital improvements plan.

S. *Service unit* means a living unit equivalent based upon a 5/8" by 3/4" displacement-type water meter, which serves as the standardized measure of consumption, use or generation attributable to new development.

T. *Site-related facility* means an improvement or facility which 1) is for the primary use or benefit of a new development, or for the primary purpose of safe and adequate provision of water or wastewater facilities to serve a new development (including improvements and facilities needed to meet the city's minimum standards for water or wastewater facilities), 2) is not included in the impact fees capital improvements plan, and 3) the developer or property owner is solely responsible for constructing or installing under subdivision or other applicable regulations.

U. *System facility* means a capital improvement or facility expansion which is designated in the capital improvements plan and is not a site-related facility. *System facility* may include a capital improvement which is located offsite, or within or on the perimeter of the development site.

V. *Utility application* includes 1) any request for connection of a new development to the city water or wastewater system, 2) any request to replace or increase the size or capacity of an existing water meter to serve new development, or 3) any report, including a report from a property owner, a city employee or official, or another provider of water or wastewater services, of an additional connection to, or an increase in the use of, city water or wastewater facilities.

W. *Wastewater facility* means a wastewater interceptor or main, lift station, treatment facility or other facility included within and comprising an integral component of the city's collection, transmission and treatment system for wastewater. *Wastewater facility* includes land, easements or structures associated with such facilities. *Wastewater facility* excludes a site-related facility.

X. *Water facility* means a water transmission line or main, pump station, storage tank, water supply facility, treatment facility or other facility included within and comprising an integral component of the city's water production, supply, storage or distribution system. *Water facility* includes land, easements or structures associated with such facilities. *Water facility* does not include site-related facilities.

Y. *Water meter* means a device for measuring the flow of water to a development, whether for domestic, commercial, industrial, fire protection, irrigation, or other purposes.

Section 5. Applicability.

This ordinance applies to all new, non-exempt development within the city limits and its extraterritorial jurisdiction within the applicable service areas. The provisions of this ordinance shall apply uniformly within each service area.

Section 6. Impact Fee as Condition of Development Approval.

All applications for approval related to a new development shall be subject to assessment and collection of impact fees under this ordinance, and each approval of a building permit, plumbing permit or utility application shall be conditioned on payment by the applicant of impact fees imposed under this ordinance.

Section 7. Maximum Impact Fees Per Service Unit.

A. The maximum impact fee per service unit for each service area shall be established by category of capital improvements, and shall be as set forth in the Schedule 1 included by reference in this ordinance. The maximum impact fee per service unit for each service area for each category of capital improvement shall be computed in the following manner:

1. Calculate the total projected costs of capital improvements identified in the capital improvements plan for each category of capital improvements;
2. From such amounts, subtract a credit equal to 50 percent of the such total projected costs;

and

3. Divide the resulting amounts by the total number of service units anticipated in the respective service area, based on the land use assumptions for that service area.

B. The impact fee per service unit which is to be paid by each new development shall be established by ordinance by the city council, as amended from time to time, and shall be an amount less than or equal to the maximum impact fee per service unit calculated under subsection A.

Section 8. Assessment of Impact Fee Amounts.

A. The assessment of the amount of the impact fee per service unit for each category of capital improvements for a new development shall be made as follows:

1. For a new development on land which is unplatted at the time of a building permit, plumbing permit or utility application and for which platting is not required, the assessment shall occur at the time a building permit, plumbing permit, or utility application is submitted, whichever first occurs, and shall be the amount of the maximum impact fee per service unit then in effect.

2. For a new development on platted property, the assessment shall occur at the time of plat recordation, and shall be the amount of the impact fee per service unit applicable for the date of recordation, as described in Schedule 2.

B. After assessment under subsection A, the amount of the assessment per service unit for the development cannot be increased unless the quantity of service units needed for the development increases. In the event of such an increase, a new assessment for the development shall occur using the applicable Schedule 2 rate then in effect and the applicable service unit computation criteria in Section 9.

C. Following the vacating of any plat or submittal of any replat, a new assessment must be made in accordance with subsections A and B.

D. Approval of an amended plat under Local Government Code Section 212.016 and the city's subdivision regulations will not change the assessment for the affected area.

Section 9. Computation of Service Units and Collection of Impact Fees.

A. Impact fees shall be computed and collected at the following times:

1. For land within the city limits, at the time the city issues a building permit, or if no building permit is needed, at the time the city approves a utility application.

2. For land outside the city limits, or at the time the city issues a plumbing permit, or if no building permit is needed, at the time the city approves a utility application.

B. The computation of the quantity of service units required for a new development will be as follows:

1. For new development subject to assessment under Section 8.A.1, and for new development subject to assessment under Section 8.A.2 with plat recordation on or after October 5, 2002, the quantity of service units will be determined by water meter size and type as listed in Exhibit 1. The appropriate size and type of the water meter proposed for a new development is to be determined initially by the applicant and is subject to review and approval by the director of water and wastewater, using best water utility industry and engineering practices and standards. The director of water and wastewater may require an applicant to provide building plans, plumbing layouts, flow calculations and other information to support a request for use of a specific size or type of water meter.

2. For new development subject to assessment under Section 8.A.2 with plat recordation on or before October 4, 2002, the quantity of service units will be determined by reference to the service unit computation criteria stated in the attached Exhibit 7 which is included by reference in this ordinance.

C. The city shall compute the impact fees for a new development in the following manner:

1. The amount of each impact fee shall be determined by multiplying the number of service units required for the new development by the impact fee per service unit using the applicable rate in Schedule 2.

2. The amount of each impact fee shall be reduced by any allowable offsets or credits for that category of capital improvements, in the manner provided in Section 10.

3. The total amount of each impact fee for the new development shall be calculated and attached to the permit or utility application as a condition of approval.

D. The amount of each impact fee for a new development shall not exceed an amount computed by multiplying the assessment amount per service unit under Section 8 by the number of service units for the development determined under this section.

E. If a building or plumbing permit or an approved utility application for which an impact fee has been paid has expired, and a new application is thereafter filed, the impact fees shall be computed using the Schedule 2 rate then in effect, with credits for previously paid fees being applied against the newly determined amount.

F. Whenever a property owner proposes to increase the number of service units for a new development, the additional impact fees collected for the new service units shall be determined by using the applicable service unit computation criteria in Subsection B and the applicable Schedule 2 rate then in effect, and the additional fees shall be collected at the times prescribed by this section.

G. For new development to be served by the city wastewater system and by a water system other than the city's, the operator of the water system shall provide written notice to the city of each application for new water service or a change in meter size within 10 days of the date the application is received. This requirement is satisfied by the submission of a legible copy of the application or other information that identifies the applicant and indicates the proposed land use and the meter size.

H. The city council may approve an agreement with a property owner for a different time, manner of computation, or payment of impact fees for new development on the owner's property.

Section 10. Offsets and Credits Against Impact Fees.

A. The city shall offset or credit the present value of any system facility which has been dedicated or contributed to by a property owner and accepted by the city, including the value of rights-of-way or capital improvements constructed under an agreement with the city, against the amount of the impact fee due for that category of capital improvement. The offset or credit shall be associated with the plat of the property that is to be served by the system facility.

B. All offsets or credits against impact fees shall be based upon standards promulgated by the city, which may be adopted as administrative guidelines, including the following standards:

1. An offset or credit shall not be given for the dedication or construction of site-related facilities, including improvements and facilities needed to meet the city's minimum standards for water or wastewater facilities.

2. An offset shall not exceed an amount equal to the eligible costs of the improvement multiplied by a fraction, the numerator of which is the impact fee per service unit due for the new development computed using Schedule 2, and the denominator of which is the maximum impact fee per service unit for the new development as computed using Schedule 1.

3. The unit costs used to calculate offsets and credits shall not unreasonably exceed those assumed for the capital improvements included in the impact fees capital improvements plan for the category of facility for which the impact fee is imposed. An offset or credit for an oversized improvement or facility shall not exceed the incremental increase in the cost of the improvement or facility over the cost of an improvement or facility needed to meet the city's minimum standards for water or wastewater facilities.

4. An offset or credit shall not be given for an oversized facility which is not identified within the capital improvements plan, unless the city agrees that the facility supplies capacity to other new developments, and provisions for offsets or credits are incorporated in an agreement for capital improvements under section 18.

5. An offset or credit shall not be given a) when no impact fees for a new development can be collected under this ordinance, b) for any amount exceeding the total impact fees due for a new development for that category of capital improvements, unless expressly agreed to by the

city in writing, or c) for any oversized facility where the city executes an oversize reimbursement agreement with the property owner for the oversize cost.

6. Offsets or credits for system facilities dedicated to and accepted by the city for a new development prior to the effective date of this ordinance shall be prorated among the total number of service units within the development, and reduced by an amount equivalent to the number of existing service units within the development, and further reduced by the amount of any participation funds received from the city and by any payments received from other developments that utilize the system facility.

7. The city may participate in the costs of a system facility to be dedicated to the city in connection with a new development, including costs that exceed the amount of the impact fees due for the development under Schedule 1 for that category of capital improvements, in accordance with the city's subdivision regulations. The amount of any offset shall not include the amount of the city's participation.

C. Offsets or credits created after the effective date of this ordinance shall expire 10 years from the date the offset or credit was created. Offsets or credits arising prior to that effective date shall expire ten years from the date the offset or credit was created.

D. An offset or credit associated with a new development shall be applied to reduce the impact fee for the first building or plumbing permit or utility application for the property at the applicable time for collection of the fee, and thereafter to each subsequent building or plumbing permit or utility application, until the offset or credit is exhausted.

Section 11. Establishment of Accounts.

A. The city finance department shall establish an account to which interest is allocated for each category of capital improvement for which an impact fee is imposed under this ordinance. Each impact fee collected for that category shall be deposited in that account.

B. Interest earned on an impact fee account is considered funds of the account and shall be used solely for the purposes authorized in Section 12.

C. The finance department shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in Section 12. Disbursement of funds shall be authorized by the city at such times as are reasonably necessary to carry out the purposes and intent of this ordinance; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed 10 years from the date the fee is deposited into the account.

D. The finance department shall maintain and keep financial records for impact fees, which shall show the source and disbursement of all fees collected in or expended from each account. The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

E. The finance department shall maintain and keep financial records for these accounts which shall show the source and disbursement of all funds placed in or expended from the accounts.

Section 12. Use of Proceeds of Impact Fee Accounts.

A. The impact fees collected under this ordinance may be used to finance or to recoup the costs of any capital improvements or facility expansion identified in the capital improvements plan for the applicable category of capital improvements, including but not limited to the construction contract price, surveying and engineering costs, and land acquisition costs (including purchase price, court awards and costs, attorney's fees, and expert witness fees). Impact fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the City to finance capital improvements or facility expansions. Impact fees also may be used to pay fees paid to an independent qualified engineer or financial consultant for preparing or updating the capital improvements plan.

B. Impact fees collected under this ordinance shall not be used to pay for any of the following expenses:

1. Construction, acquisition or expansion of capital improvements or assets other than those identified in the capital improvements plan for the applicable category of capital improvements;
2. Repair, operation, or maintenance of existing or new capital improvements or facility expansions;
3. Upgrade, expansion or replacement of existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
4. Upgrade, expansion, or replacement of existing capital improvements to provide better service to existing development; provided, however, that impact fees may be used to pay the costs of upgrading, expanding or replacing existing capital improvements in order to meet the need for capital improvements generated by new development; or
5. Administrative and operating costs of the city.

Section 13. Appeals

A. The property owner or applicant for new development may appeal the following administrative decisions to the city council:

1. The applicability of an impact fee to the development;
2. The amount of the impact fee due;
3. The availability of, the amount of, or the expiration of an offset or credit;

4. The application of an offset or credit against an impact fee due;
 5. The amount of the impact fee in proportion to the benefit received by the new development;
 6. The amount of a refund due, if any; or
 7. The applicability of an exception or exemption.
- B. The appellant must file a written notice of appeal with the city clerk within 30 days after the decision being appealed. If the notice of appeal is accompanied by a payment or other security satisfactory to the city attorney in an amount equal to the original determination of the impact fee due, the development application may be processed and approved while the appeal is pending.
- C. The appeal shall be heard by the city council at its next regular meeting that is scheduled at least 15 days from the date the appeal is filed. The appellant may present evidence directly relevant and material to the grounds for the appeal. The burden of proof shall be on the appellant to demonstrate that the decision being appealed was not in accordance with this ordinance or standards or guidelines adopted under or referred to in this ordinance.
- D. The city council, after public hearing, may grant the appeal in whole or in part, or deny the appeal. If the amount of an impact fee is reduced, any portion of the impact fee paid under protest shall be refunded to the appellant.

Section 14. Refunds.

- A. Upon written request, any impact fee or portion thereof collected under this ordinance, which has not been expended within 10 years from the date of payment, shall be refunded to the record owner of the property for which the impact fee was paid, or to a governmental entity, if the entity paid the fee, together with interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002 of the state Finance Code, or its successor statute. The application for refund under this section shall be submitted within 60 days after the expiration of the ten-year period for expenditure of the fee. An impact fee shall be considered expended on a first-in, first out basis.
- B. An impact fee collected under this ordinance shall be considered expended if the total expenditures for capital improvements or facility expansions authorized in Section 12 within 10 years after the date of payment exceeds the total fees collected for such improvements or expansions during that period.
- C. Upon written request, all or part of an impact fee collected under this ordinance shall be refunded if:
1. Existing service is available and service is denied;

2. Service was not available when the fee was collected, and the city has failed to commence construction of facilities to provide service within two years of fee payment; or

3. Service was not available when the fee was collected and has not subsequently been made available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in any event this period shall not extend more than five years from the date of fee payment.

D. If a refund is due under subsections A, B or C, the city shall divide the difference between the amount of expenditures and the amount of the fees collected by the total number of service units assumed within the service area for the period to determine the refund due per service unit. The refund shall be calculated by multiplying the refund due per service unit by the number of service units for the development for which the fee was paid, and interest due shall be calculated upon that amount.

Section 15. Rebates.

A. If a tract of land for which an impact fee has been paid is replatted, resulting in a reduction in the number of service units, and the new impact fee to be collected is less than that paid, the City shall rebate the difference, if water meters to serve the area being replatted have not been installed.

B. If a building or plumbing permit or an approval of a utility application in a new development expires after an impact fee has been paid, no utility connection for the applicable category of capital improvements has been made under the permit or approval, and a modified or new application has not been filed within six months of the expiration, the city shall, upon written request, rebate the amount of the impact fee to the record owner of the property for which the impact fee was paid. If no application for rebate under this subsection has been filed within this period, no rebate shall become due.

Section 16. Updates to Plans and Revision of Fees.

A. The city shall update the land use assumptions and capital improvements plan at least every five years, commencing from the date of adoption of such plans, and shall recalculate the impact fees based thereon in accordance with the procedures set forth in Local Government Code Chapter 395, or in any successor statute.

B. The city may review its land use assumptions, impact fees, capital improvements plan and other factors such as market conditions more frequently than provided in subsection A to determine whether the land use assumptions and capital improvements plan should be updated and the impact fees recalculated accordingly, or whether Schedules 1 or 2 should be changed. Schedule 2 may be amended without revising land use assumptions and capital improvements plan at any time prior to the update described in subsection A, as long as the impact fee per service unit to be collected under Schedule 2 does not exceed the impact fee per service unit set in Schedule 1.

C. If the city council determines that no change to the land use assumptions, capital improvements plan or impact fee is needed at the time of an update under subsection A, the council may dispense with the update in accordance with Local Government Code section 395.0575.

D. The City may amend the land use equivalency table by resolution at any time prior to the update provided for in subsection A; provided that the number of service units associated with a particular land use is not increased.

Section 17. Functions of Advisory Committee.

A. The advisory committee shall perform the following functions:

1. Advise and assist the city in adopting land use assumptions;
2. Review the capital improvements plan and file written comments on impact fees;
3. Monitor and evaluate implementation of the capital improvements plan;
4. Advise the city of the need to update or revise the land use assumptions, capital improvements plan and impact fees; and
5. File a semiannual report evaluating the progress of the capital improvements plan and identifying perceived inequities in implementing the plans or administering the impact fees.

B. The city shall make available to the advisory committee any professional reports prepared in the development or implementation of the capital improvements plan.

C. The city council shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

Section 18. Agreements for Capital Improvements.

A. The property owner for a new development may construct or finance a capital improvement or facility expansion designated in the capital improvements plan, if required or authorized by the city council, by entering into a facility agreement with the city prior to the issuance of any building permit for the development. The facility agreement shall be on a form approved by the city, and shall identify the estimated cost of the improvement or expansion, the schedule for initiation and completion of the improvement or expansion, a requirement that the improvement be designed and completed to city standards, and such other terms and conditions as deemed necessary by the city. The facility agreement shall provide for the method to be used to determine the amount of the offset or credit to be given against impact fees due for the development.

B. The city and the property owner may agree that the costs incurred or funds advanced will be 1) offset or credited against the impact fees otherwise due from the new development, or 2)

reimbursed to the owner from impact fees paid from other new developments that will use the capital improvements or facility expansions, or from other funding sources. In the event the city elects to reimburse an owner for the dedication, construction or financing of a capital improvement or facility expansion designated in the capital improvements plan, the terms of reimbursement shall be incorporated in the agreement required by subsection A. Reimbursement agreements shall further be based on the availability of city funds from all sources including current and projected impact fee fund accounts.

Section 19. Exceptions and Exemptions.

A. To encourage affordable housing, the city shall refund a percentage of the impact fees paid for construction of a new single-family dwelling that qualifies for the refund under affordable housing guidelines approved by the city council.

B. Impact fees shall not be collected from any local taxing unit, as defined in the state Tax Code, that is authorized to impose and is imposing ad valorem taxes on property.

C. No wastewater impact fee shall be charged for an irrigation meter.

D. No impact fee shall be charged for a fire line meter that serves only a fire suppression system.

E. To encourage water-efficient development, the city shall refund a percentage of the impact fees paid for construction of a new single-family dwelling that qualifies for the refund under water conservation guidelines approved by the city council.

F. The city manager is authorized to adopt and administer guidelines for applying the provisions of this section.

Section 20. Use of Other Financing Mechanisms.

A. The city may finance capital improvements or facility expansions designated in the capital improvements plan through the issuance of bonds, through the formation of public utility districts or other assessment districts, or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law, in addition to the use of impact fees.

B. Except as herein otherwise provided, the assessment and collection of an impact fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.

C. The city council may decide that the city shall waive all or a part of impact fees due for a new development under duly adopted criteria.

Section 21. Impact Fee as Additional and Supplemental Regulation.

A. Impact fees established by this ordinance are additional and supplemental to, and not in substitution of, any other requirements imposed by the city on the development or subdivision of land, the issuance of building permits, or the sale of water or wastewater taps. Impact fees are intended to be consistent with and to further the policies of city's comprehensive land use plan, the capital improvements plan, the zoning ordinance, subdivision regulations and other city policies, ordinances and resolutions by which the city seeks to ensure the provision of adequate public facilities in conjunction with the development of land.

B. This ordinance shall not affect in any manner the permissible use of property, density of development, design, and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to city zoning, subdivision or other regulations, which shall remain in full force and effect without limitation.

C. This ordinance is not intended to replace or supercede the city's subdivision and other regulations requiring the dedication, extension or construction of water or wastewater improvements, and is intended to be interpreted consistently with such regulations.

D. The cost per service unit for any category of capital improvement under this ordinance may be used in determining whether a city regulation requiring the dedication or construction of that type of capital improvement is proportional to the nature and extent of the impacts of a new development on the City's facilities.

Section 22. Relief procedures.

A. Any person who has paid an impact fee or a property owner for a new development for which an impact fee has been paid may submit a written petition for the city council to determine whether any duty of the city under this ordinance has been performed in a timely manner. The petition shall be submitted to the city clerk, and shall state the nature of the duty. The city council will hear the petition at its next meeting that is scheduled at least seven days from the date the petition is filed. If the city council determines that the duty is required under the ordinance and is late in being performed, the council shall direct that the duty be promptly commenced and continued until completion. This subsection is not applicable to matters which may be appealed under section 13.

B. The city council may grant a variance in whole or in part from any requirement of this ordinance, upon written request by a property owner, following a public hearing. The council will grant a variance only upon finding that a strict application of a requirement would, when regarded as a whole, result in confiscation of the property owner's property.

C. If the city council grants a variance to the amount of the impact fee due for a new development under this section, the council may transfer the amount of the reduction in the impact fee to the proper impact fee account from other city funds.

Division II. Land Use Assumptions

Section 23. Land Use Assumptions.

A. The amended system-wide land use assumptions for the City of San Marcos, on which the capital improvements plan for water and wastewater facilities are based, are adopted as Exhibit 2, included by reference in this ordinance.

B. The system-wide land use assumptions may be amended from time to time, under the procedures in Section 16.

Division III. Water Facilities Impact Fees

Section 24. Impact Fee Water Service Area.

A. An amended impact fee water service area is established, consisting of the land within the city limits and within portions of the city's extraterritorial jurisdiction depicted on the attached Exhibit 4 which is included by reference in this ordinance.

B. The boundaries of the impact fee water service area may be amended from time to time, or new water service areas may be delineated, under the procedures in Section 16.

Section 25. Water Improvements Plan.

A. The amended city water improvements plan included in the capital improvements plan attached as Exhibit 3 is adopted and included by reference in this ordinance.

B. The water improvements plan may be amended from time to time under the procedures in Section 16.

Section 26. Water Facilities Impact Fee.

A. The maximum impact fee per service unit for water facilities included in Schedule 1 is adopted and included by reference in this ordinance.

B. The amount of the impact fee per service unit for water facilities stated in Schedule 2 is adopted and included by reference in this ordinance.

C. The impact fees per service unit for water facilities may be amended from time to time under the procedures in Section 16.

Division IV. Wastewater Facilities Impact Fees.

Section 27. Impact Fee Wastewater Service Area.

A. An amended impact fee wastewater service area is established, consisting of the land within the city limits and within portions of the city's extraterritorial jurisdiction depicted the attached Exhibit 5 which is included by reference in this ordinance.

B. The boundaries of the impact fee wastewater service area may be amended from time to time, or new water service areas may be delineated, under the procedures in Section 16.

Section 28. Wastewater Improvements Plan.

A. The amended city wastewater improvements plan included in the capital improvements plan attached as Exhibit 3 is adopted and included by reference in this ordinance.

B. The wastewater improvements plan may be amended from time to time under the procedures in Section 16.

Section 29. Wastewater Facilities Impact Fee.

A. The maximum impact fee per service unit for wastewater facilities included in Schedule 1 is adopted and included by reference in this ordinance.

B. The amount of the impact fee per service unit for wastewater facilities stated in Schedule 2 is adopted and included by reference in this ordinance.

C. The impact fees per service unit for wastewater facilities may be amended from time to time under the procedures in Section 16.

Section 30. Impact Fee Schedules.

A. Schedule 1, setting forth the maximum impact fees per service unit for water and wastewater facilities, is adopted as shown on the attached Exhibit 6 which is included by reference in this ordinance.

B. Schedule 2, setting forth the impact fees per service unit to be collected from new development for water and wastewater facilities, is adopted as shown on the attached Exhibit 6 which is included by reference in this ordinance.

SECTION 2. A. This ordinance repeals and replaces Divisions 4 and 5 of Article 3 of Chapter 86 of the City Code, except that the amounts of water and wastewater impact fees and the method for calculating service units described in those divisions shall be in effect for each new development for which a subdivision master plan was approved and in effect prior to the effective date of this ordinance, if the property owner submits a written request for this exception to the City Manager within 30 days of such effective date. The request must identify the development and include a calculation of the number of water and wastewater service units needed for the development, which shall be subject to review and approval by the director of water and wastewater. Any such exception shall cease to apply to a development if the approval period for the master plan expires. Any such exception shall apply to a master plan during the time of an approved extension of the master plan, and to an amendment to a master plan to the extent the amendment does not increase the number of water or wastewater service units for the development. To the extent an amendment to a master plan or any subsequent development of the property increases the number of water or wastewater services units, the provisions of this ordinance will be used to determine the amounts of water and

wastewater impact fees and the number of service units needed.

B. This ordinance is cumulative of all other ordinances of the City, and this ordinance shall not operate to repeal or affect any of such other ordinances except as to provisions that are in conflict with the provisions of this ordinance, in which event the conflicting provisions are hereby superseded.

SECTION 3. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 4. Any person violating any provision of this ordinance commits a misdemeanor and is subject to the penalty provided in Section 1.015 of the San Marcos City Code upon conviction.

SECTION 6. This Ordinance will take effect ten days after the date of its final passage, and the City Clerk will publish notice of its adoption in a newspaper of general circulation in the City.

PASSED on first reading on

PASSED on second reading on

PASSED, APPROVED AND ADOPTED on

Robert B. Habingreither
Mayor

Approved:

Attest:

Mark B. Taylor
City Attorney

Janis K. Womack
City Clerk